

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act)	CC Docket No. 96-98
Of 1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above captioned docket.

Rural telephone companies are exempt from the unbundling requirements of Section 251, unless a State Commission determines otherwise. Therefore, NTCA's comments in this proceeding are limited to the unbundling rules as they affect rural carriers' roll out of advanced services and broadband. NTCA submits that rural carriers are successfully deploying advanced services and broadband to their subscribers under the current rate of return regulatory regime, but that regulatory stability is necessary for the success to continue. The Commission should not consider sweeping regulatory changes without specifically considering their impact upon further deployment in rural areas.

I. INTRODUCTION

NTCA is a not-for-profit association established in 1954. It represents more than 500 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as “rural telephone companies” in the Telecommunications Act of 1996.

Defined as “rural telephone companies,” NTCA members are exempt from the unbundling requirements of Section 251 of the Act.¹ Unless or until they lose that exemption, rural carriers need not provide competitors with access to unbundled network elements. A rural telephone company loses the exemption only after it receives a bona fide request for interconnection, services, or network elements and a State Commission determines that providing the interconnection, services, or network elements is not unduly economically burdensome, is technically feasible, and is consistent with Universal Service principles.²

¹ 47 USC §251(f)

² 47 USC §251(f)(1)(A); See, In the Matter of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26 (rel. January 19, 2001) (The Commission granted NTCA’s Petition for Clarification regarding the rural exemption and line sharing obligations concerning rural incumbent local exchange carriers. The Commission stated, “we clarify that no state commission can terminate a rural telephone company’s section 251(f)(1) exemption from the obligations of section 251(c), including the Commission’s line sharing obligation, absent a bona fide request for interconnection, services, or other network elements that the state commission determines is not unduly economically burdensome, is technically feasible, and consistent with section 254.”)

II. THE COMMISSION MUST CONSIDER RULE CHANGES IN THE SPECIFIC CONTEXT OF HOW THEY WILL AFFECT RURAL CARRIERS AND THEIR DEPLOYMENT OF ADVANCED SERVICES AND BROADBAND

The Commission questions whether its unbundling analysis should explicitly take into account goals of the Act other than competition.³ Since meaningful competition cannot be sustained and is unlikely to be achieved in many rural areas, it is important that the Commission consider rule changes in the context of how they would affect the Act's other goals, including advanced services deployment in rural areas and universal service.

The Telecommunications Act of 1996 sought to accomplish several, often competing, objectives. While promoting competitive opportunities was certainly a primary purpose of the Act, so was advanced services deployment and ensuring that all Americans have access to comparable telecommunications.

Section 706 directs the Commission to encourage deployment of advanced telecommunications capability to all Americans. Section 254 of the Act lists seven basic universal service principles, including access to advanced telecommunications and information services for all regions of the Nation.

The Commission's unbundling analysis to date has focused on the introduction and promotion of competition. However, many rural areas cannot sustain meaningful competition. High costs and sparse populations make it uneconomical for several carriers to serve the same rural territory.

Congress recognized this inherent difference between urban and rural territory when it created the Section 251 rural exemption to unbundling. Competing carriers do not receive access to a rural carrier's network elements unless or until a State

³ NPRM, ¶ 21.

Commission determines that the competing carrier should. The definitions of “necessary” and “impair” are thus irrelevant to exempt rural carriers. The Commission should look beyond reformation of its rules to promote competition and concentrate also on facilitating advanced services and broadband deployment in areas served by rural telephone companies.

III. ADVANCED SERVICES AND BROADBAND ARE BEING DEPLOYED TO RURAL AREAS IN A TIMELY MANNER

Changes to the current regulatory structure should occur only if correctable deficiencies are found. Competition and the removal of regulatory constraints may encourage investment in urban areas, but in rural areas, deployment of advanced services and broadband is occurring under the rate-of-return regulatory regime. The stability provided by the current regulatory structure has served areas served by NTCA members well.

Last summer, NTCA surveyed its members on their activities in the areas of providing broadband services and Internet access to their customers.⁴ The survey was sent to NTCA’s 542 cooperative and small commercial member companies; 259 (48%) responded. The survey results underline the fact that NTCA members are doing an impressive job of making broadband available to their customers.⁵

One third of survey respondents expected to offer broadband to all customers by the end of 2001. At the time of the survey, 60% of the residential customers of survey

⁴ NTCA also surveyed its members in 2000 on broadband deployment and will do so again in the summer of 2002.

⁵ A copy of NTCA’s 2001 survey report is available on-line at www.ntca.org.

respondents had the option to order at least 200 kbps of downstream data; and it was predicted that 69% would be able to do so by the end of 2002.

Seventy-four percent of survey respondents offered their customers bandwidth in excess of 200 kbps downstream and eighty-three percent intended to by the end of 2002.

Rural carriers recognize the importance of broadband to their future. Eighty-six percent of survey respondents considered broadband “extremely important” or “very important” for their future business development. Not a single carrier characterized broadband as “unimportant.”

The success of rural carriers in rolling out advanced and broadband services can be directly attributed to the stability provided to them through rate-of-return regulation. While carriers stated that under the current conditions they cannot provide service to customers in the most remote and expensive to serve locations, regulatory constraints, such as unbundling requirements, were not cited as an investment deterrent for rural carriers.

IV. THE RURAL BROADBAND MARKET IS IMMATURE

Although rural carriers are actively deploying broadband services, the markets for these services remain in their infancy. As was pointed out in NTCA’s comments in CC Docket No. 01-337,⁶ service providers are in the process of determining both what their customers want, and the most cost effective and efficient means of satisfying that demand.

⁶ Comments of NTCA, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Notice of Proposed Rulemaking, CC Docket No. 01-337, FCC 01-360 (filed March 1, 2002).

Today, incumbent LECs' principal technology for broadband delivery to the rural residential market is DSL. But cable modem service, fixed wireless systems, and satellite communications all remain potential alternative conduits.

Further, while rural carriers are making service available, as might be expected with relatively young technologies, broadband take rates remain extremely low. NTCA broadband survey respondents indicated that 4% of those customers with cable modem broadband availability subscribe to the service; 3% of those with DSL availability subscribe; 2% of those with wireless broadband access subscribe; and 1% of responding companies' customers with T1 access subscribes.

Rural telephone companies are carefully and cautiously planning future investment decisions and service offerings. It is premature to make regulatory changes that may ultimately hinder a rural carrier's ability to provide innovative new services. A relatively stable and predictable regulatory structure is necessary to further encourage investment in broadband deployment.

V. THE FCC SHOULD NOT DISTURB REGULATORY STRUCTURES THAT ARE SUCCESSFULLY BRINGING ADVANCED SERVICES AND BROADBAND TO RURAL AMERICA

The current regulatory structure has worked well to help rural telephone companies bring advanced services and broadband to their subscribers. While it is true that it is not currently economically feasible to provide broadband to a small percentage of the rural population, the stability of rate of return regulation has permitted rural carriers to concentrate efforts on deployment.

This deployment is threatened if the Commission makes sweeping regulatory changes that do not specifically consider how rural carriers will be affected. The Commission should not disturb what seems to be working.

If regulatory changes are necessary to encourage advanced services and broadband deployment to urban markets, the Commission should be flexible in the implementation of those changes. Rules that work for urban areas do not always work for rural areas. Rural carriers should have the ability to choose the regulatory structure that will provide the stability and certainty they need to continue with the roll out of advanced services and broadband.

VI. CONCLUSION

Rural incumbent telephone companies are successfully deploying advanced services and broadband to their subscribers. The stability provided by the rate of return regulatory structure has enabled them to do so. Regulatory changes that are appropriate for urban and large carriers may threaten the further deployment of services by rural carriers. The Commission should therefore specifically consider rural needs as it considers rule revisions and give rural carriers the regulatory stability and flexibility they need to continue their advanced services and broadband deployment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 01-338, CC Docket No. 96-98, CC Docket No. 98-147, FCC 01-361 was served on this 5th of April 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

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